

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO.196/2012

Order reserved on : 15.4.2015

Date of Order: ...20.4.2015.....

CORAM

**HON'BLE MR. JUSTICE HARUN-UL-RASHID,
JUDICIAL MEMBER**

**HON'BLE MR. R. RAMANUJAM, ADMINISTRATIVE
MEMBER**

Rafique Mohammed S/o Shri Safique Mohammed aged about 50 years, working as Black Smith under Section Engineer(Construction) , North Western Railway, Jaipur in scale Rs.3050-4590, Resident of Luharo Ka Mohalla, Nareyana, Tehsil Sambhar, District Jaipur (Raj.).

.....Applicant

(By Advocate Mr. Nand Kishore)

VERSUS

1. Union of India through General Manager, North Western Railway, Jawahar Circle, Jagatpura, Jaipur.
2. Chief Administrative Officer (Construction), North Western Railway, Jaipur.
3. Dy. Chief Engineer(Construction), North Western Railway, Jaipur.
4. Section Engineer(C) , P.Way, North Western Railway, Jaipur.

.....Respondents

(By Advocate Mr. Anupam Agarwal)

ORDER

(Per Hon'ble Mr. R.Ramanujam, Member(A))

The applicant has filed the present OA praying for the following reliefs:-

8. (i) The respondents letters dated 5.1.2011 and 1.2.2012 may be quashed and set aside being contrary to the Railway Board directives.

(ii) The respondents further be directed to continue the MACP granted to the applicant vide their letter dated 5.7.2009.

2. The applicant alleges that he was initially appointed in the Railways as Black Smith w.e.f. 12.7.1981 and was granted temporary status from 1.1.1984. The services of the applicant were regularized on 10.9.1997. The Assured Career Progression Scheme (ACPS) recommended by the 5th CPC dealt with the problem of genuine stagnation and hardship faced by the Government employees due to lack of adequate promotional avenues. The scheme was introduced w.e.f. 9.8.1999. The scheme provided for two financial up-gradations if no regular promotion during the period of 12 years and 24 years of service have been availed of by an employee. The Railway Services(Revised Pay) Rules, 2008 provides that three up-gradations would be granted at 10, 20, and 30 years as per Modified Assured Career Progression

Scheme(MACP). Applicant was accordingly granted upgradation by the respondents on 5.7.2009 through Ann.A/6 order. However, respondents through impugned orders dated 5.1.2011 (Ann.A/2) and dated 1.2.2012(Ann.A/1) withdrew the benefit given to the applicant on the ground that grant of MACP benefit to persons working on adhoc basis was irregular and against the rules. Aggrieved by the said order the applicant seeks directions to the respondents to continue the MACP already granted through Ann.A/6.

3. The respondents contended that the applicant was initially appointed in the Railways as casual labour w.e.f. 12.7.1981 and was granted temporary status from 1.1.1984. The services of the applicant were regularized in Group-D as a Gangman on 10.9.1997. He is presently working as a Black Smith on adhoc basis which is three grades higher than his substantive appointment. The MACP Scheme clearly provides that the regular service shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment or on absorption /re-employment. Service rendered on adhoc/contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. It further provides that the benefit of financial upgradation to

those holding higher posts on adhoc basis shall be considered on their reversion to the lower post or if it is beneficial vis-à-vis the pay drawn on adhoc basis. The applicant is working as Black Smith on adhoc basis and therefore, the grant of MACP to the applicant was irregular.

4. The withdrawal of MACP granted to the applicant was only a correction of an error and therefore, the applicant could not rely upon the erroneous order to seek an undue benefit.

5. We have heard the counsels for the applicant and the respondents and perused the records. The respondents' contention that the applicant's services were regularized as Gangman in Gr.D w.e.f. 10.9.1997 and that he is presently working as Black Smith on adhoc basis has not been contested by the applicant in his rejoinder. As the applicant is presently working on the higher post on adhoc basis, the benefit of MACP would be available to such persons only on reversion to the lower post in terms of the scheme notified by Ann.R/1.

6. After carefully examining the rival contentions, we are of the view that the applicant has been unable to establish that he was appointed in a substantive capacity as Black Smith. On the other hand he has

admitted that his services were regularized in Group D w.e.f. 10.9.1997. He is working as Black Smith on adhoc basis on a post that carries a higher grade. He is, therefore, entitled to MACP only as a regular employee of Group D if it is more beneficial to him than the pay he is drawing in an adhoc capacity. It is not the applicant's plea that grant of MACP as a Group D, Gangman is more beneficial to him than the present pay being drawn on adhoc basis. In view of this, we hold that the order dated 5.7.2009 (Ann.A/6) was clearly erroneous and no grievance is made out against its withdrawal. The application is devoid of merits and is accordingly dismissed with no order as to costs.


(R.RAMANUJAM)
MEMBER(A)


(JUSTICE HARUN-UL-RASHID)
MEMBER(J)

Adm/